IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1216 OF 1989

Shri Mallu Bharama Patil, .. Petitioner.
Vs
The Director of Resettlement
and ors. .. Respondents

Mr N.J.Patil, for the petitioner.
Mrs S.S.Bhende, AGP for the respondents.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.
DATE : APRIL 27, 2006.
PC:

1. Heard the learned counsel for the petitioner and the learned AGP for the respondents.

2. By notification dated 7.7.1983 issued under section 4(1) of the Land Acquisition Act, the land admeasuring 81 Ares was sought to be acquired from Gat Nos 476 and 478 (Pt) for resettlement. The petitioner contends that he was the owner of the land sought to be acquired and by the said proposed acquisition his total holding could be reduced to less than 8 Acres. Reliance in this regard has been placed on the order passed in Regular Execution Application No.143 of 1982. As per the petitioner, Regular Civil Suit no.922 of 1971 was filed by one Ambi who was his partner and the suit was dismissed on or about 29.8.1980. The plaintiff filed an appeal no.223 of 1980 and the same was allowed on or about 13.8.1982. It appears that in the decree passed by the lower appellate

court there was a direction to pay mesne profit to the plaintiff and as he failed to do that the petitioner's land admeasures 2 acres and 20 gunthas was sold, claims the learned counsel for the petitioner. We are afraid this bald statement cannot be accepted unless the copy of the decree was placed before us and we could be able to identify the exact holding of the petitioner in Gat No.367.

3. Even otherwise, as per the contentions of the petitioner, the total land in Gat No.367 admeasures 16 acres and 8 gunthas and in the same he has 50 percent share. There is no document in support of his contention that he had 50 percent share in the said land. If there was a partnership in cultivation of land it cannot be presumed that two partners are equal sharers of the said land as owners. The record also shows that on failure to pay the mesne profit amount some land of the petitioner was directed to be sold to execute the decree. All these transactions, if at all they have taken place on account of the decree of the lower appellate court, cannot come in the way of the acquisition impugned in this petition.

4. Admittedly the notification under section 11 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 was issued on 2.11.1978 and section 12 of the said Act puts restrictions on partition or transfer of land in

the benefit zone by way of execution of the decree of the competent court. In addition, sub-divisions are also barred after the notification under section 11 of the Act was issued.

5. In the petition memo no particulars are furnished about the ownership land of the petitioner. The 7/12 extracts or any other documentary proof regarding the exact holding of the petitioner has not been annexed to the petition memo. Even the representation submitted by the petitioner to the Land Acquisition Officer taking objections in an enquiry after the notification under section 4(1) of the Land Acquisition Act was issued, the petitioner did not give the details of his holding of agricultural land as an owner though he furnished the details of the so-called tenanted land.

6. In the affidavit filed by the Special Land Acquisition Officer No.12, Kolhapur in civil application no.8229 of 1997 which was filed for restoration of this petition, it has been stated that after the notification under section 4 of the Land Acquisition Act was issued, on 25.8.1983, enquiry under section 5-A of the Act was concluded on 10.9.1985 and the declaration under section 6 of the Act was published in the Government Gazette on 7.8.1986. It was pasted at village Chawadi on 25.11.1986 and finally the Special Land Acquisition Officer passed the Award on 24.11.1988,i.e. much before the Petitioner approached

this Court.

7. In the premises, there is no merit in this petition in challenging the acquisition proceedings and,therefore, the petition must fail. The same is hereby dismissed. Rule discharged.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE,J.)**